

CURTIS D. WHEELER

IBLA 81-325

Decided June 25, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer W-73266.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Lands Subject to

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas offer filed for such land must be rejected. Even where the record is unclear whether the conflicting outstanding lease in question has been extended by drilling or whether it has expired at the end of its term, the land is still not available for the filing of new over-the-counter offers until it first has been posted by BLM as open to the filing of simultaneous offers.

APPEARANCES: Curtis D. Wheeler, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Curtis D. Wheeler has appealed a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 5, 1981, rejecting his noncompetitive oil and gas lease offer for the reason the land is embraced in oil and gas lease W-26586, which issued with an effective date of December 1, 1970. The State Office noted that Geological Survey has advised that the lease may be eligible for a 2-year drilling extension.

Appellant contends the lease expired December 1, 1980, and that the land should be subject to lease.

[1] Where land is included within an outstanding oil and gas lease it is not available for leasing and an oil and gas lease offer filed for such land must be rejected. Alver C. Duncan, 39 IBLA 144 (1979); Curtis D. Wheeler, 31 IBLA 354 (1977). The record confirms that appellant has applied for land that was formerly included within lease W-26586. Although there is no verification contained in the record to establish that the lease has, in fact, been extended by drilling, the lands would in any event not be available for the filing of new over-the-counter lease offers.

Under 43 CFR 3112.1-1, all lands covered by leases which expire at the end of their terms are subject to the filing of new over-the-counter lease offers only after BLM has posted a list of the lands in the expired leases together with a notice stating that such lands are open to the filing of simultaneous offers. Jack E. Lea, 49 IBLA 358 (1980); Robert N. Enfield, 36 IBLA 383 (1978); Robert P. Marshall, 36 IBLA 279 (1978). If no simultaneous offers are received during the filing period the lands then may be made available for over-the-counter offers. L. A. Walstrom, Jr., 36 IBLA 397 (1978); David A. Provinse, 33 IBLA 312 (1978).

In this case, if the facts are such that lease W-26586 has not been extended by drilling, the land must first be made available for simultaneous filings. In that event, BLM has never posted these lands as open to simultaneous offers, and appellant's over-the-counter offer would therefore be premature, and must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

